

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DONALD RAY WALKER, No. C-10-1425 TEH (PR)

Plaintiff,

v.

ORDER OF SERVICE

DONALD POM PAN, et. al.,

Defendants.

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Plaintiff, a prisoner incarcerated at the Correctional Training Facility ("CTF") in Soledad, California, has filed a pro se Complaint under 42 U.S.C. § 1983 alleging that CTF medical personnel were deliberately indifferent to his serious medical needs. Doc. #1.

I

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint,

1 or any portion of the complaint, if the complaint "is frivolous,
2 malicious, or fails to state a claim upon which relief may be
3 granted," or "seeks monetary relief from a defendant who is immune
4 from such relief." Id. § 1915A(b). Pleadings filed by pro se
5 litigants, however, must be liberally construed. Hebbe v. Pliler,
6 611 F.3d 1202, 1205 (9th Cir. 2010); Balistreri v. Pacifica Police
7 Dep't., 901 F.2d 696, 699 (9th Cir. 1990).

8 To state a claim under 42 U.S.C. § 1983, a plaintiff must
9 allege two essential elements: (1) that a right secured by the
10 Constitution or laws of the United States was violated, and (2) that
11 the alleged violation was committed by a person acting under the
12 color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

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14 A

15 Deliberate indifference to serious medical needs violates
16 the Eighth Amendment's proscription against cruel and unusual
17 punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976). A "serious
18 medical need" exists if the failure to treat a prisoner's condition
19 could result in further significant injury or the "unnecessary and
20 wanton infliction of pain." McGuckin v. Smith, 974 F.2d 1050, 1059
21 (9th Cir. 1992) (citing Estelle, 429 U.S. at 104), overruled in part
22 on other grounds by WMX Technologies, Inc. v. Miller, 104 F.3d 1133,
23 1136 (9th Cir. 1997) (en banc). A prison official is "deliberately
24 indifferent" if he knows that a prisoner faces a substantial risk of
25 serious harm and disregards that risk by failing to take reasonable
26 steps to abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994).

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2 Here, plaintiff alleges that CTF medical personnel were
3 deliberately indifferent to his serious medical needs regarding the
4 treatment and surgery on his knee, which caused resulting back pain.
5 Liberally construed, plaintiff's allegations appear to state a
6 cognizable Eighth Amendment claim for deliberate indifference to his
7 serious medical needs and defendants will be served.

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II

10 For the foregoing reasons and for good cause shown:

11 1. The Clerk shall issue summons and the United States
12 Marshal shall serve, without prepayment of fees, copies of the
13 Complaint in this matter, all attachments thereto, and copies of
14 this Order on defendants CTF staff physicians/surgeons Donald Pom
15 Pan, Timothy Friederichs, J. Walker and Michael Sepulveda. The
16 Clerk also shall serve a copy of this Order on Plaintiff.

17 2. To expedite the resolution of this case, the Court
18 orders as follows:

19 a. No later than ninety (90) days from the date of
20 this Order, Defendants shall file a motion for summary judgment or
21 other dispositive motion. A motion for summary judgment shall be
22 supported by adequate factual documentation and shall conform in all
23 respects to Federal Rule of Civil Procedure 56, and shall include as
24 exhibits all records and incident reports stemming from the events
25 at issue. If Defendants are of the opinion that this case cannot be
26 resolved by summary judgment or other dispositive motion, they shall
27 so inform the Court prior to the date their motion is due. All
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1 papers filed with the Court shall be served promptly on Plaintiff.

2 b. Plaintiff's opposition to the dispositive motion
3 shall be filed with the court and served upon Defendants no later
4 than thirty (30) days after Defendants serve Plaintiff with the
5 motion.

6 c. Plaintiff is advised that a motion for summary
7 judgment under Rule 56 of the Federal Rules of Civil Procedure will,
8 if granted, end your case. Rule 56 tells you what you must do in
9 order to oppose a motion for summary judgment. Generally, summary
10 judgment must be granted when there is no genuine issue of material
11 fact - that is, if there is no real dispute about any fact that
12 would affect the result of your case, the party who asked for
13 summary judgment is entitled to judgment as a matter of law, which
14 will end your case. When a party you are suing makes a motion for
15 summary judgment that is properly supported by declarations (or
16 other sworn testimony), you cannot simply rely on what your
17 complaint says. Instead, you must set out specific facts in
18 declarations, depositions, answers to interrogatories, or
19 authenticated documents, as provided in Rule 56(e), that contradicts
20 the facts shown in the Defendants' declarations and documents and
21 show that there is a genuine issue of material fact for trial. If
22 you do not submit your own evidence in opposition, summary judgment,
23 if appropriate, may be entered against you. If summary judgment is
24 granted, your case will be dismissed and there will be no trial.

25 Rand v Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) (App.
26 A).

27 Plaintiff also is advised that a motion to dismiss for
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1 failure to exhaust administrative remedies under 42 U.S.C. §
2 1997e(a) will, if granted, end your case, albeit without prejudice.
3 You must "develop a record" and present it in your opposition in
4 order to dispute any "factual record" presented by the defendants in
5 their motion to dismiss. Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14
6 (9th Cir. 2003).

7 d. Defendants shall file a reply brief within
8 fifteen (15) days of the date on which Plaintiff serves them with
9 the opposition.

10 e. The motion shall be deemed submitted as of the
11 date the reply brief is due. No hearing will be held on the motion
12 unless the Court so orders at a later date.

13 3. Discovery may be taken in accordance with the Federal
14 Rules of Civil Procedure. No further court order is required before
15 the parties may conduct discovery.

16 4. All communications by Plaintiff with the Court must
17 be served on Defendants, or Defendants' counsel once counsel has
18 been designated, by mailing a true copy of the document to
19 Defendants or Defendants' counsel.

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1 5. It is plaintiff's responsibility to prosecute this
2 case. Plaintiff must keep the court and all parties informed of any
3 change of address and must comply with the court's orders in a
4 timely fashion. Failure to do so may result in the dismissal of
5 this action pursuant to Federal Rule of Civil Procedure 41(b).
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7 IT IS SO ORDERED.
8 DATED 09/29/10


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10 THELTON E. HENDERSON
11 United States District Judge